

**Memorandum to the File
Case Closure**

**Alleged Conflict of Interest
VA Medical Center, Birmingham, Alabama
(2009-02125-IQ-0118)**

The VA Office of Inspector General (OIG) Administrative Investigations Division investigated an allegation that [REDACTED]

[REDACTED] Birmingham VA Medical Center (VAMC), engaged in a conflict of interest by participating in the procurement of radiology services from the University of Alabama at Birmingham (UAB), a VA affiliate, while also a member of the UAB faculty. To assess this allegation, we interviewed [REDACTED] Contracting Officers [REDACTED] and [REDACTED] Contracting Officer's Technical Representative (COTR) [REDACTED]

(b) (7)(C)

We also reviewed emails and other relevant documents and reviewed applicable Federal laws, regulations, and VA policy.

Federal law requires that agencies obtain full and open competition through the use of competitive procedures unless expressly authorized by statute to do otherwise. 41 USC § 253. Federal acquisition regulations require Contracting Officers to ensure that all requirements of law and regulations are met before entering into a contract and that the Government avoids even the appearance of a conflict of interest in Government-contractor relationships. 48 CFR § 1.602-1(b) and 3.101-1. The Standards of Ethical Conduct for Employees of the Executive Branch require employees to act impartially, prohibit giving preferential treatment to any private organization, and require employees to avoid actions that create the appearance that they are violating the law or ethical standards. They also prohibit an employee from using his Government position for the private gain of persons with whom the employee is affiliated in a nongovernmental capacity. 5 CFR § 2635.101 and .702.

VA Policy states that a Government employee who is employed by a contractor is prohibited from participating personally and substantially on behalf of the Government through decision, approval, disapproval, recommendation, rendering of advice, certifying for payment or otherwise in that contract. Further, no VA employee who is an employee, officer, director, or trustee of an affiliated university or who has a financial interest in the contract may lawfully participate in a VA contract or any other Government contract with the university. This prohibition applies even though the individual physician or clinician who is employed by the affiliate university may not gain or lose financially from the contract between the VA and the affiliated university, because the financial interest of the school (which is imputed to the employee by law) is affected by the contract. VHA Handbook 1660.3, Paragraphs 3 and 5c (September 22, 2008).

Background

OIG Office of Contract Review issued a pre-award review (report number 09-00619-64, dated January 29, 2009) of a UAB proposal submitted in response to a solicitation for radiology services for the VAMC. The report reflected that OIG had "concerns related to [redacted]'s participation in contractual matters. We recommend that [the Contracting Officer] obtain a legal opinion from Office of General Counsel regarding whether it would be appropriate for the [redacted] to participate in this contract since he has an academic appointment as listed on UAB's Directory."

The OIG Senior Auditor who drafted the review told us that when OIG performed a pre-award review, the auditors routinely looked for any potential conflicts of interest. He said that, in this case, he identified a potential conflict of interest in that [redacted] had a faculty appointment with UAB; however, he said that he did not recall hearing any complaints about [redacted]'s involvement with the procurement process. Further, in a February 3, 2009, email to Regional Counsel concerning OIG's pre-audit review, [redacted] stated that he was not aware of any questionable actions by [redacted] and that he regarded OIG's recommendation as "boilerplate" language. (b) (7)(C)

On April 23, 2009, OIG received a complaint that [redacted] allegedly continued to participate in the radiology procurement "directly and indirectly" and did so "for years despite the fact that this violates VA policy." The complaint did not explain the nature of [redacted]'s alleged participation in the procurement process, and it identified him as the Chief of Radiology. We found that [redacted] never served as the VAMC Radiology Chief.

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[redacted] told us that he never participated in the process to procure UAB radiology services; he did not know why OIG identified a conflict of interest in their pre-award review; and he did nothing that would cause OIG to raise this issue. In a review of contract documents and emails related to the VAMC radiology contract, we found no evidence that [redacted] improperly participated in the procurement of UAB radiology services. Further VA employees with knowledge of the radiology procurement process did not know of any conduct by [redacted] that might constitute a conflict of interest. (b) (7)(C)

[redacted] told us that [redacted] was not involved in any way in the procurement process for UAB radiology services. She said that she saw no emails from [redacted] regarding the contract, and she said that she did not believe that [redacted] attended any meetings related to it. Contracting records reflected that [redacted] and [redacted] were involved in developing the solicitation and negotiating terms for the UAB radiology services contract from 2008-2009. [redacted] said that he was not aware of anything [redacted] did that might constitute a conflict of interest with regard to the radiology contract, and [redacted] told us that he never saw [redacted] involve himself in contract negotiations. Further, [redacted] said that he never "saw, witnessed, or

documented" any conduct by [REDACTED] that might lead to a conflict of interest complaint against him.

[REDACTED] and [REDACTED] told us that they knew of no actions by [REDACTED] that were a conflict of interest. [REDACTED] said that she was aware that OIG raised concerns about a conflict of interest concerning [REDACTED] in their pre-award review; however, she said that she believed OIG's concerns were related to [REDACTED]'s position as [REDACTED] and his faculty appointment at UAB, rather than any specific actions by [REDACTED]. [REDACTED] also said that, to his knowledge, [REDACTED] did nothing that would cause OIG to raise this issue. Further, he said that he was not aware of anything [REDACTED] did subsequent to OIG's report that might lead to a conflict of interest complaint against him.

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Email records reflected that [REDACTED] while a contractor employee under a UAB contract, participated in discussions of the radiology contract with UAB representatives in the October-November 2008 timeframe. Records reflected that on October 7, 2008, [REDACTED] sent an email to the UAB Contract Administrator and [REDACTED] of the UAB Radiology Department, requesting a meeting to discuss the "VA [radiology] call contract." In this email, he stated that "[n]o one at the Birmingham VA really wants to use anyone but UAB for [radiology] call coverage" and proposed some fee arrangements to bring UAB's costs in line with that of other vendors. [REDACTED] told us that she attended a meeting during which [REDACTED] met with the UAB Contract Administrator to discuss the procurement of UAB radiology services.

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On December 15, 2008, [REDACTED] told [REDACTED] and [REDACTED] that [REDACTED] was involved in trying to influence the rates for on-call radiology services to be provided under the UAB contract. [REDACTED] forwarded an excerpt from [REDACTED]'s October 7 email to the UAB Contract Administrator and warned [REDACTED] and [REDACTED] that [REDACTED]'s direct involvement in the contract could be construed as a conflict of interest under VA Directive 1663. [REDACTED] told us that, after receiving [REDACTED]'s message about [REDACTED]'s activities, she met with [REDACTED] to provide him guidance on avoiding conflicts of interest and that she had no reason to believe that [REDACTED] engaged in any further inappropriate conduct with regard to the radiology contract.

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During this time period, [REDACTED] was a contractor employee serving as the [REDACTED]. Federal acquisition regulations state that contractors shall not be used for the performance of inherently governmental functions, to include the direction and control of Federal employees. 48 CFR § 7.5. Contract records reflected that the contract has since expired, and [REDACTED] told us that [REDACTED] became a VA employee in [REDACTED]. We therefore did not pursue this matter further.

Conclusion

We did not substantiate an allegation that [REDACTED] engaged in a conflict of interest by participating directly or indirectly in the procurement of a radiology services contract with the University of Alabama at Birmingham. [REDACTED] never served as the Chief of Radiology Services, and we found no evidence that he was involved in a contracting process for UAB radiology services. We found that [REDACTED] while a contractor employee working in the position of [REDACTED] improperly engaged in discussions concerning the UAB contract; however, [REDACTED] addressed the matter with [REDACTED] after it came to her attention. Further, [REDACTED] improperly served as [REDACTED] giving him supervisory oversight, while a contractor employee, which is contrary to Federal regulations. However, the contract has since expired and [REDACTED] is now a VA employee. Therefore, we are closing the investigation without issuing a formal report or memorandum.

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Prepared by:

[REDACTED]

1/11/11
Date

Approved by:

[REDACTED]

[Signature]
Date